

CAUSE NO.: C-4916-19-E

JUAN ERNESTO MARTINEZ

§ IN THE _____ JUDICIAL DISTRICT

VS.

§§ COURT OF

WAL-MART STORES TEXAS LLC

§§ HIDALGO COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES JUAN ERNESTO MARTINEZ, hereinafter referred to as Plaintiff, and files this, his Original Petition against WAL-MART STORES TEXAS LLC, hereinafter referred to as Defendant, and for cause of action will show the Court the following:

DISCOVERY CONTROL PLAN - BY RULE (LEVEL 3)

1. Plaintiff intends to conduct discovery under Level 3 as provided by Rule 190 of the Texas Rules of Civil Procedure.

CLAIM FOR RELIEF

2. Plaintiff is seeking monetary relief from Defendant in an amount that is more than \$200,000.00, but less than \$1,000,000.00, as compensation for his damages.

PARTIES

3. Plaintiff Juan Ernesto Martinez resides in McAllen, Hidalgo County, Texas.

4. Defendant Wal-Mart Stores Texas LLC is a duly licensed limited liability company in Texas. Defendant Wal-Mart Stores Texas LLC may be served with process by serving its registered agent, C.T. Corporation System, at 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

VENUE AND JURISDICTION

5. The incident described hereinbelow or events giving rise to Plaintiff's claim against



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Defendant arose in McAllen, Hidalgo County, Texas. Venue for this cause of action therefore lies in Hidalgo County, Texas.

6. The damages that Plaintiff is seeking from Defendant are within the jurisdictional limits of the Court. This Court therefore has jurisdiction of this cause of action.

FACTS

7. On October 13, 2019, at approximately 8:30 p.m., Plaintiff was shopping at Defendant's Wal-Mart store located on West Nolana Avenue in McAllen, Hidalgo County, Texas. Defendant had sandwiches stocked in an open cooler or refrigerator in the store. There was a metal pipe positioned vertically near a corner of the cooler. The pipe was approximately one and half feet in length and was secured to the floor. After Plaintiff grabbed a sandwich from the cooler, he turned away from the cooler and attempted walk away from the cooler. He then tripped on the pipe, fell to the floor, and suffered injuries and damages. Defendant installed the pipe, creating a dangerous condition on its store premises. Knowledge of the dangerous condition is therefore imputed on Defendant under Texas Premises Liability Law.

CAUSE OF ACTION BASED ON PREMISES LIABILITY LAW AND PROXIMATE CAUSE

8. At all time that is material to the incident described hereinabove and this case, Defendant was negligent under premises liability law in that: A. Plaintiff was a business invitee, B. Defendant owned, possessed, and/or controlled the premises where the incident described hereinabove occurred, C. A condition on the premises, the pipe positioned next to the cooler, as described in the preceding paragraph, posed an unreasonable risk of harm, D. Defendant knew or reasonably should have known of the danger posed by the condition, and E. Defendant breached its duty of ordinary care by failing to adequately warn Plaintiff of the condition and failing to make the condition reasonably safe. This negligence by Defendant was the sole proximate cause or a proximate cause of the incident described hereinabove and of the injuries and damages suffered by Plaintiff, as set out hereinbelow.

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DAMAGES

9. As a proximate cause of the negligence of Defendant in causing the incident described hereinabove, Plaintiff suffered injuries, suffered physical pain and mental anguish in the past, will suffer physical pain and mental anguish in the future, suffered physical impairment in the past, will suffer physical impairment in the future, suffered physical disfigurement in the past, will suffer physical disfigurement in the future, lost wages in the past, will incur a loss of earning capacity in the future, incurred medical expenses in the past, and will incur medical expenses in the future. Plaintiff is seeking monetary relief from Defendant in an amount that is more than \$200,000.00, but less than \$1,000,000.00, as compensation for his damages.

VICARIOUS LIABILITY

10. At all time that is material to the incident described hereinabove and this case, Defendant's employees acted within the course, scope, and authority of their employment and/or agency relationship with Defendant. Defendant should therefore be held vicariously liable to Plaintiff for all of Plaintiff's damages alleged herein.

PREJUDGMENT AND POSTJUDGMENT INTEREST

11. Plaintiff further sues Defendant herein for prejudgment interest at the maximum rate allowed by law on those damages where such interest may be assessed and for postjudgment interest at the maximum rate allowed by law on all of Plaintiff's damages from the date of judgment until the judgment is paid in full.

REQUEST FOR JURY AND JURY FEE

12. Plaintiff requests that the above-styled and numbered cause be tried to a jury and represents to the Court that the proper jury fee has been paid to the Clerk of this Court with the filing of Plaintiff's Original Petition.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon final hearing, he have judgment against Defendant for all of his damages hereinabove alleged, for prejudgment

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and postjudgment interest, and for any and all other relief, both general and special, in law and in equity, and for all costs of Court in his behalf expended.

Respectfully Submitted,

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